



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/152417

PRELIMINARY RECITALS

Pursuant to a petition filed September 27, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on November 05, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee Early Care Administration (the agency) correctly determined that Petitioner was overpaid child care benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Keisha Love, Child Care Subsidy Specialist-Senior
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On September 20, 2013, the agency sent Petitioner a Child Care Client Overpayment Notice, case number [REDACTED], BV referral Number [REDACTED], indicating that she was overpaid child

care benefits in the amount of \$2102.64 for the months of May 2012, June 2012, November 2012, and January 2013. (Exhibit 2, pgs. 2-4)

3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on September 27, 2013. (Exhibit 1)
4. Petitioner's assistance group size is 2. (Exhibit 2, pgs.2-4)

DISCUSSION

I. JURISDICTION

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. *Wisconsin Shares Child Care Assistance Manual*, §2.1.5.3 See also, Wis. Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

II. A RECIPIENT MUST REPAY A CC OVERPAYMENT IF EITHER THE RECIPIENT OR THE AGENCY WAS AT FAULT IN CREATING THE OVERPAYMENT.

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Wisconsin Shares Child Care Assistance Manual*, §2.1.4.2. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

III. INCOME LIMITS

Petitioner did not dispute the fact that she used child care benefits in the amounts stated by DCF. However, Petitioner disagreed with the agency's determination that she was over the income limit.

In order for initial applicants to be eligible for Child Care benefits, household income must be below 185% of the Federal Poverty Limit (FPL). *Wisconsin Child Care Assistance Manual* §1.6.2 For on-going eligibility, income cannot exceed 200% FPL. *Wisconsin Child Care Assistance Manual* §1.6.3 Income is evaluated on the basis of gross monthly income. *Id.* at §1.6.4

This case concerns on-going benefits. As such, in order for Petitioner to be eligible for benefits during the times in question, her income needed to be at or below 200% FPL, which for an assistance group size of 2 was \$2522 in 2012 and until January 24, 2013. See <http://aspe.hhs.gov/poverty/12computations.shtml>.

Petitioner did not contest the accuracy of the wage information contained in Respondent's Exhibit 2, page 18, which included a month by month verification of Petitioner's income between January 2012 and March 2013. Based upon that information we have the following gross monthly income for the months in question:

May 2012- \$3148.28
 June 2012 – \$2848.26
 November 2012 - \$4786.91
 January 2013- \$2530.24

It is the agency's contention that overpayments occurred in the aforementioned months, because Petitioner did not correctly report changes in her income.

Petitioner was obligated to report any increases in her income that put her about the 200% FPL limit, within 10 days that the change occurred. *Wis. Admin. Code §DCF 201.04(2m); Wisconsin Shares Child Care Assistance Manual*, §§1.15.1 and 1.15.2.

Petitioner was paid bi-weekly on Thursdays, with her first check on October 7, 2010. (Exhibit 2, pg. 17) This would mean that in May 2012, she had a three pay check month and that her last check on May 30, 2012, probably put her over the 200% FPL limit. See <http://www.timeanddate.com> If Petitioner had reported the change as required, she would not have needed to report the change until June 10, 2013. As such, there is no overpayment for May 2012.

Per *Wisconsin Shares Child Care Assistance Manual*, §§1.15.3, if Petitioner had reported the change by June 10, 2012, the agency would have to act on the change ten days after it was reported, in this case by June 20, 2012. The agency would then have to give Petitioner 10 days advance notice that her case was going to be closed. *Wisconsin Shares Child Care Assistance Manual*, §3.8.9. In addition, it appears eligibility determinations based upon income are done on a calendar month basis. See *Wisconsin Shares Child Care Assistance Manual* §§1.3.6, 1.3.6.1 and 3.8.3. Consequently, Petitioner's benefits could only have been terminated effective July 1, 2012. Thus, there was no overpayment for June 2012, either.

I note that as of July 2012, Petitioner's income was \$2102.11. (See Exhibit 2, pgs. 3 and 18) This was below the 185% FPL initial eligibility threshold of \$2332.85, so she would have been eligible again for benefits in that month. (See <http://aspe.hhs.gov/poverty/12computations.shtml>)

Looking at November 2012, there was again a three paycheck month. The last paycheck would have been issued on November 29, 2012. As such, Petitioner was not obligated to report the change in income until December 10, 2012, since December 9, 2012 fell on a Sunday. Consequently, there was no overpayment for November 2012.

Again, had Petitioner correctly reported the change in income by the December deadline, it would have resulted in a termination of her childcare benefits, effective January 1, 2013. Petitioner's January 2013 income of \$2530.24 was over the 200% FPL, \$2522 income limit by \$7.76, so an overpayment of benefits did occur in January 2013.

CONCLUSIONS OF LAW

1. The agency correctly determined that Petitioner was over-issued child care benefits in January 2013.
2. The agency did not correctly determine the amount of the overpayment, because there was no overpayment for May, June and November 2012.

THEREFORE, it is

ORDERED

That the agency amend the September 20, 2013 Child Care Overpayment Notice, case number [REDACTED], BV referral Number [REDACTED], to reflect an overpayment for January 2013, only, in the amount of \$486.44. The agency shall take all administrative steps necessary to complete this task within 10 days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new

evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of December, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 5, 2013.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud